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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1980

SAN DIEGO GAS & ELECTRIC COMPANY,
Appellant,

vs.

CITY OF SAN DIEGO, et al.,
Appellees.

On Appeal From the California Court of Appeal Fourth Appellate District, Division One

AMICI CURIAE BRIEF OF THE CALIFORNIA COASTAL COMMISSION, THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION, THE CALIFORNIA TAHOE REGIONAL PLANNING AGENCY, AND THE OFFICE OF PLANNING AND RESEARCH

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QUESTIONS PRESENTED

1. Are Fifth and Fourteenth Amendment issues properly before this Court where a basis of the lower court judgment rests on an application of state law (failure to exhaust administrative remedies)?

2. Have the actions of the City frustrated appellant's property rights where appellant has the opportunity for a reasonable use of its holdings acquired for power plant purposes, has not been frustrated in any effort to pursue its investment-backed expectations with regard to a power plant and where the City's open and public planning process did not constitute inequitable precondemnation activities?

3. If a land use regulatory measure enacted pursuant to the police power should some into conflict with property rights protected by the Fifth and Fourteenth Amendments would a judicial decree of invalidation constitute an appropriate remedy or does the Constitution compel forced purchase?

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Amici have the parties' written consent to file this brief and the letters granting such consent have been filed with the Clerk of the Court.

INTEREST OF AMICI

This brief is respectfully submitted in support of appellee City of San Diego.

The California Coastal Commission, the San Francisco Bay Conservation and Development Commission, and the California Tahoe Regional Planning Agency have extensive

regulatory authority over the proposed use and development of land and water areas within their respective jurisdictions.[1] Protection of the natural resources and environment of the California coastline, the San Francisco Bay and the California portion of the Lake Tahoe Basin are paramount objectives for these agencies. *See e.g. People ex rel. Younger v. Co. of El Dorado* (1971) 5 Cal.3d 480; *CEEED v. California Coastal Zone Conservation Commission, supra; People ex rel. S. F. Bay Con. etc. Com. v. Town of Emeryville* (1968) 69 Cal.2d 533. Actions taken by these agencies to promote the objective of protection of natural resources have resulted in litigation where landowners have charged that the effect is to have inversely condemned their properties. *See e.g. State of California v. Superior Court* (1974) 12 Cal.3d 237; *Candlestick Properties, Inc., supra.* In these cases, and other similar liti-

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[1]The California Coastal Commission is an agency of the State of California, charged with the duty of developing and enforcing plans for the permanent protection and restoration of the California coastline. Cal. Public Resources Code §§ 30000 et seq. The Commission and its functions are the outgrowth of an extensive planning and regulatory process mandated by the People of California in an initiative adopted in 1972. The constitutionality of that planning and regulatory process has been upheld against constitutional attack. *CEEED v. California Coastal Zone Conservation Commission* (1974) 43 Cal.App.3d 306. The San Francisco Bay Conservation & Development Commission is also a public agency of the State of California. Cal. Gov't Code §§ 66600 et seq. One of the Commission's main purposes is to provide permanent protection for the San Francisco Bay and its shoreline. The Commission's enabling legislation has likewise been upheld against constitutional attack. *Candlestick Properties, Inc. v. San Francisco Bay Conservation etc. Com.* (1970) 11 Cal.App.3d 557. The California Tahoe Regional Planning Agency exercises planning and regulatory authority over the California portion of the Lake Tahoe Basin. Cal. Gov't Code §§ 67000 et seq. It too is engaged in litigation where landowners have asserted that its regulatory actions constitute a taking of property.

gation, the agencies have consistently contended that their regulatory actions, taken pursuant to their respective enabling laws, constitute appropriate exercises of the police power, but if they have improperly exercised that power, the remedy is invalidation of the action, rather than an award of damages to the affected landowner. The issues in this case are thus of critical importance to these agencies.

The Office of Planning and Research of the State of California is charged with the responsibility for developing state land use policies, coordinating planning of all state agencies and assisting and monitoring local and regional planning. Cal. Gov't Code §§ 65035, 65040. The Office prepares advisory guidelines to aid local governments in the preparation of general plans as required by Cal. Gov't Code §§ 65300 *et seq.* and § 65040.2. While the Office has no direct or regulatory power over local land use (Cal. Gov't Code § 65035), in its role as advisor to local governments regarding their planning obligations the Office of Planning and Research is vitally interested in the issues raised in this case.

STATEMENT OF THE CASE

Amici curiae adopt the statement of the case of appellee City of San Diego and amici curiae Conservation Foundation et al. For purposes of illustration amici have included four appendices to this brief. Appendix A is an aerial photo showing appellant's property from directly overhead. Appendix B is an oblique aerial photo showing appellant's property including that portion within the open space plan area. Appendix C is a composite of maps of the United States Army Corps of Engineers prepared in 1967 showing that part of appellant's property which is within a flood plan. Appendix D is a composite of maps of the Federal Insurance Administration showing that part of appellant's property which is a special flood hazard area.

Further, appellant has realized a substantial economic benefit from its property involved in this case because appellant, as a regulated utility, has had the property included in its rate base thereby realizing a substantial economic benefit from its ownership. See statement of the case of amici curiae Conservation Foundation et al. This evidence is not in the trial court record, but it is taken from official records of the California Public Utilities Commission and amici respectfully submit that it should be taken into consideration by the Court.

SUMMARY OF ARGUMENT

1. The opinion of the California Court of Appeal which appellant challenges in the present case reversed the judgment of the trial court which had concluded that appellant's property had been taken and that just compensation was due to appellant. In the course of reversing the trial court judgment, the opinion did not comment on the validity of the findings of fact or conclusions of law supporting the lower court's judgment. Rather, the appellate court indicated that the absence of any request by appellant to the City for permission to develop the property limited the scope of the litigation to the facial validity of the City's regulatory enactments. This result, premised on the California doctrine of exhaustion of administrative remedies, involved an application of state law. Federal constitutional questions involving an alleged "taking" are not properly before this Court, and it is respectfully submitted that it would be appropriate to dismiss the appeal.

2. As a matter of law the City's actions, either considered individually or as a whole, satisfy the tests which this Court has established as necessary prerequisites to satisfy substantive due process requirements (thereby not violating Fifth or Fourteenth Amendment guarantees). Specifically, appellant has realized economic benefit from its investment and has the opportunity for a reasonable use

of its property, particularly when the entire 412 acre holdings acquired by the company for power plant purposes are considered. Additionally, appellant may pursue its investment-backed expectations with regard to a power plant since the City's open space plan contemplates that possible use and, in any event, the regulatory jurisdiction of the City with respect to such a facility is pre-empted and is vested in the State Energy Resources Conservation and Development Commission. See generally, Cal. Public Resources Code §§ 25000 *et seq.* and particularly §§ 25500 *et seq.* In the same vein, appellant's investment-backed expectations are both inchoate and shifting since appellant argues that it purchased the property for the purposes of a power plant and yet for its own reasons apparently abandoned that intended use and urged to the trial court that an industrial park facility is the highest and best use of the property. Finally, the open and public planning process of the City, including recommendations for acquisition which could not be pursued since the electorate rejected the necessary bond issue, did not give rise to a legal claim. *Agins v. City of Tiburon* (1980) 100 S.Ct. 2138, 2142-43 n.9.

3. When courts have been faced with regulations which if enforced would constitute "takings," they have invalidated those measures because they are unaccompanied by the just compensation which would be necessary to sustain them. *Penn Central Transp. Co. v. New York City* (1978) 438 U.S. 104, 136. This approach reflects the proper accommodation between one of the least limitable powers of government (the "police power") and constitutionally protected private property rights. A remedy of forced purchase through the payment of just compensation would amount to government by purchase. *Andrus v. Allard* (1979) ..... U.S. ....., 100 S.Ct. 318, 326. The courts have invoked the remedy of compensation for "takings" where it is apparent that the legislative body contemplated that

remedy. See, e.g. *Rail Reorganization Act Cases* (1974) 419 U.S. 102. In the instant case there was no legislative determination to invoke a requirement of just compensation and the usual and traditional remedy of invalidation, assuming the City's regulations were excessive, is the proper remedy.

ARGUMENT

I

THE PURPORTED FEDERAL CONSTITUTIONAL ISSUES ARE NOT PROPERLY BEFORE THIS COURT

A. A Basis of the State Court's Judgment Was that Appellant's Failure to Apply to the City Limited the Scope of the Case to a Determination of the Facial Validity of the Several Legislative Enactments Affecting Appellant's Property. The Judgment Therefore Resolved the Appeal on the Basis of Principles of State Law

The second Court of Appeal opinion in this case is the operative judgment which is before this Court.[2] See JS, App. G.[3] That opinion reversed the judgment of the trial court. The effect and significance of the reversal is described in the last paragraph of the opinion. Specifically,

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[2]The initial opinion of the Court of Appeal, sometimes relied upon by appellant, has no force or effect either as a judgment or as a statement of any principle of law discussed in that opinion. This is because a hearing was granted as to that opinion by the California Supreme Court thereby vacating the first Court of Appeal opinion. *Knouse v. Nimocks* (1937) 8 Cal.2d 482, 483. The nonexistence of the initia' Court of Appeal opinion is aptly described in *People v. Woods* (1937) 19 Cal.App.2d 556:

> . . . the opinion in that case is resting in a judicial morgue, having succumbed to a painless lethal gas in the form of an inoffensive order by the Supreme Court transferring the case to a higher sphere. *Id.* at 560.

[3]This is a reference to an appendix in the jurisdictional statement. References to the joint appendix will be designated "JA" with appropriate page references.

the court stated regarding appellant: "It has not made application to use or to improve the property, nor has it asked City what development might be permitted." In the same paragraph the court noted that appellant's complaint alleged that the City had arbitrarily exercised its police power by enacting an unconstitutional zoning law and general plan element. The court noted further that the trial court findings and conclusions did not cover these allegations (the allegations were contained in the fourth cause of action of the complaint. See 3A at pp. 32-33).[4] Moreover, nowhere in the opinion did the court render an actual holding as to the findings of fact and conclusions of law of the trial court other than to reverse the judgment and limit the scope of a retrial to the validity of the zoning and general plan enactments of the City. Thus, in effect the opinion rejected the trial court's approach of waiving the requirement of exhaustion of administrative remedies and speculating on how the City might deal with a proper development application by appellant. Therefore, in fact the California doctrine of exhaustion of administrative remedies is a basis of the Court of Appeal opinion.

The Court of Appeal's ruling was perfectly consistent with California law which allows judicial review of the facial validity of an enactment without exhaustion but does not allow, on jurisdictional grounds, review of how ordinances or statutes would be applied. *State v. Superior Court* (1974) 12 Cal.3d 237, 251. In fact, the Court of Appeal may have been prescient since its approach is entirely consistent with the later opinion of this Court

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[4]The same paragraph also made reference to allegations that the zoning and general plan requirements had been unconstitutionally applied by the City. Since it is a fact that appellant has never applied to the City for any development permits, the use of the term "applying" merely referred to the trial court's speculation concerning how the City's various legislative enactments might pertain to the appellant's property.

in *Agins v. City of Tiburon* (1980) 100 S.Ct. 2138, where it was held:

> "Because the appellants have not submitted a plan for development of their property as the ordinances permit, there is as yet no concrete controversy regarding the application of the specific zoning provisions. [citations omitted] Thus, the only question properly before us is whether the mere enactment of the zoning ordinances constitutes a taking." *Id.* at 2141.

The long-standing rule in California is that a court which entertains litigation prior to exhaustion of administrative remedies is acting in excess of jurisdiction. See generally, *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280; *Morton v. Superior Court* (1970) 9 Cal.App.3d 982. This rule has been consistently applied in the land use regulatory context. *See e.g. Metcalf v. Los Angeles County* (1944) 24 Cal.2d 267; *South Coast Regional Commission v. Gordon* (1977) 18 Cal.3d 832.

The California rule is in accord with the policy of this Court which has recognized the utility of requiring available administrative processes to be invoked prior to judicial review. See e.g., *Aircraft & Diesel Corp. v. Hirsch* (1947) 331 U.S. 752, 767; *Allen v. Grand Cent. Aircraft Co.* (1954) 347 U.S. 535, 553.

Perhaps most cogently this Court has refused to anticipate constitutional questions in the land use context by refusing to assume that one denial is certain to mean that all use would be prohibited. *Penn Central Transp. Co. v. New York City, supra,* at 136-137.

Since the state court opinion involved the application of the California doctrine of exhaustion of administrative remedies, the case was resolved by application of principles of state law. Where an opinion rests on an independent state ground, this court has consistently refused to review the judgment. See e.g. *Fox Film Corp. v. Mullen* (1935) 296

U.S. 207. The purported "taking" issues, we respectfully submit, are not properly before this Court.[5]

B. Sound Reasons, Including Avoidance of Unnecessary Consumption of Limited Judicial Resources, Support the Wisdom of Requiring an Application to the Appropriate Governmental Body Prior to Judicial Review. The Trial Which Was Held in This Case Presents a Good Example of Why the Planning Process Should Have Occurred Prior to Litigation

The history of the instant case, where a trial occurred in the absence of any administrative action by the City, illustrates the wisdom of allowing the City the first opportunity to interpret and apply its own legislative enactments without the massive time and expense of a trial at which the court must speculate on these matters and in effect become a substitute for the planning process. Here appellant's property is generally at a low elevation, is in a drainage basin at the confluence of three river systems that drain approximately 100 square miles, is in a flood plain and is subject to standing water. Appendices C and D of this brief illustrate those portions of the property lying within a flood plain. Additionally, part of the property is subject to tidal action from the Pacific Ocean and all but a small portion lies within the California coastal zone. Portions of the property have been referred to as marshland, estuary and wildlife refuge. Appendices A and B to this brief illustrate the character of the property.

Not surprisingly, the property is included in the open space element of the City's general plan, but that does not per se prevent all development or use. State law recognizes many potential uses for open space. See Cal. Gov't Code § 65560. It also recognizes that premature

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[5]Even assuming that the opinion is wrong, which we do not believe to be the case, it nevertheless involved an application of state law and would not present federal constitutional issues.

conversion of open space is to be discouraged and the validity of this purpose has been acknowledged. *Agins v. City of Tiburon, supra,* at 2141-42. Importantly, a general plan is always subject to change. *Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 118. Moreover, substantial portions of the property retain an industrial zoning and even property in the A-1 zone might be available for light industrial use.

It is apparent, given the characteristics of the property and the complexities of the regulatory provisions pertaining to the property, that complicated planning issues would be presented in the course of determining appropriate uses and siting and proper conditions to protect life and property from floods as well as to protect natural amenities. The City was never given this opportunity and instead the court utilized its limited resources to perform this planning function.

Further evidence of the impropriety of the trial in a case such as this lies in the trial court's finding that no development could proceed unless it was consistent with the open space designation of the general plan. Appellant has relied on this determination by the trial court. See appellant's brief at p. 13. The trial court's determination and appellant's contention are fundamentally erroneous. Initially, San Diego is a charter city, a special category of incorporation under Calfornia law, and as such is not obligated by the consistency requirement of California Government code section 65860.[6]

Furthermore, where, as here, appellant contends that its property rights would be frustrated if not allowed some development, it is simply unfair, unrealistic and somewhat

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[6]Cal.Gov't Code § 65803 is in the same chapter as Cal.Gov't Code § 65860. The former section renders the consistency requirement inapplicable to charter cities. This exclusion has been recognized. *Dale v. City of Mountain View* (1976) 55 Cal.App.3d 101, 108, n.5.

officious for the trial court to impute to the City an intention that it would blindly follow a policy of consistency even though the policy might result in a constitutional violation of property rights. It must be remembered that the City's policy is not compelled by local legislative requirement and in no event could it be applied in circumstances where it would frustrate a higher order of law, namely constitutionally protected property rights. Under these circumstances: "There is no room for a presumption that [the City] will invariably sacrifice private interests to its concept of the public good." *People v. Superior Court* (1979) 91 Cal.App.3d 95, 105.

In sum, the trial court's conclusion that exhaustion of administrative remedies would have been futile was rejected by the Court of Appeal and is an application of state law. Beyond that, sound reasons of judicial economy of resources indicate that trials under these circumstances consume court time, and are costly to the parties, all in an endeavor to speculate as to how a legislative body, the city council, might have interpreted its own legislation. The courts have recognized that deference to legislative bodies includes allowing them the first opportunity to interpret and clarify their own legislative acts. In *City of Walnut Creek v. County of Contra Costa* (1980) 101 Cal. App.3d 1012 the court stated:

> "Second, there is a strong policy reason for allowing the governmental body which passed legislation to be given the chance to interpret or clarify its intention concerning that legislation.
>
> * * *
>
> The failure of the city to adequately raise and deal with the issue at those hearings leaves this court in the position of having to engage in pure speculation concerning the County's rationale in approving more than 660 units. We may not indulge in that luxury." *Id.* at 1021.

In that case the court applied the exhaustion doctrine to prevent an adjoining city from attacking a county's approval of a private development where the relevant issues were not raised in the county's administrative proceedings. It would seem especially appropriate to provide this opportunity to the City where it is contended that strict application of legislative enactments might frustrate constitutionally protected property rights and where the City's enactments, by their nature, are subject to interpretation.

It is respectfully submitted that due to the lack of ripe federal constitutional issues it would be appropriate to dismiss the appeal.

II

THE ACTIONS OF THE CITY SATISFY CONSTITUTIONAL STANDARDS OF SUBSTANTIVE DUE PROCESS AND DO NOT CONSTITUTE A "TAKING"

A. The City's Regulatory Actions Reflect an Effort to Ameliorate Legitimate and Recognized Problems

The actions of the City, either taken individually or as a whole, satisfy the tests which this Court has laid down as prerequisites for satisfying substantive due process requirements and not invading constitutionally protected property rights. Thus, the sensitive nature of the property involved together with its unique attributes have been noted. The City's actions in attempting to protect life and property from flood hazards and to protect the natural amenities of the property through the open space designation and zoning ordinances are proper subjects of regulation.

In regard to the flood hazard, Congress has found that flood losses are "increasing at an alarming rate" (42 U.S.C.

§ 4002(a)(1)) and "that the Nation cannot afford the tragic losses" to life and property. 42 U.S.C. § 4002(a)(5). The Flood Disaster Protection Act was amended to require the Secretary of Housing and Urban Development to adopt "comprehensive criteria" designed to encourage state and local measures which would "(1) restrict the development of land which is exposed to flood damage where appropriate, (2) guide the development of proposed construction away from locations which are threatened by flood hazard . . . ." 42 U.S.C. § 4102. See *Texas Landowners Rights Ass'n v. Harris* (D.O.C. 1978) 453 F.Supp. 1025, aff'd mem., 598 F.2d 311, cert denied, (1979) 100 S.Ct. 267. National policy thus recognizes the need to be sensitive to construction in flood plains. Appendix D to this brief is a composite map illustrating that the subject property is within a "special flood hazard area" designated pursuant to the federal flood insurance program. Restrictions on development in flood plains have been upheld by the courts. See generally *Turnpike Realty Co. v. Town of Dedham* (Mass. 1972) 284 N.E. 2d 891; *Turner v. County of Del Norte* (1972) 24 Cal.App. 3d 311.

Additionally, the property is a functional part of a local coastal wetland system. The Coastal Zone Management Act (16 U.S.C. §§ 1451 *et seq.*), reflects national policy of restoring or enhancing the resources of the coastal zone. In this regard the "Global 2000 Report to the President" prepared in 1980 by the Council on Environmental Quality warned about the increasing destruction or pollution of coastal wetlands due to development. Specifically, the report indicated that many commercially valuable marine fish species depend on estuaries and salt marshes at some point in their life cycle thus adversely affecting humankind's food supply from continued alterations of wetlands. *Id.* at vol. I, pp. 35-36. American courts have recognized the validity of restrictions on development in these sensitive areas. *Sibson v. State* (N.H. 1975) 336 A.2d 239; *Just v. Marinette County* (Wisc. 1972) 201 N.W.2d 761.

B. Appellant Has the Opportunity for a Reasonable Use of Its Property, Has Not Suffered Interference With Investment-backed Expectations and Cannot State a Legal Claim Based on the Effort to Acquire the Property

In addition to the subject property, appellant acquired additional land for power plant purposes north of Carmel Valley Road and east of Interstate 5. The total holdings of appellant acquired for power plant purposes approximated 412 acres (see appendices A and B). The appellant selected that portion of its holdings which were within the open space designation for purposes of the instant suit in inverse condemnation. There is no indication that its holdings taken as a whole can not provide economic benefit to appellant. For example, some 40 of those acres were sold by appellant in 1979 for substantial consideration. See statement of the case of amici curiae brief of Conservation Foundation, et al.

Segmentation of the company's holdings for purposes of creating a "taking" argument is legally improper. In *Penn Central Transportation Co. v. New York City, supra,* the railroad attempted to divide the air rights above the Grand Central terminal from the terminal itself in order to argue that the air rights had been taken. This contention was expressly rejected:

> " 'Taking' jurisprudence does not divide a single parcel into discreet segments and attempt to determine whether rights in a particular segment have been entirely abrogated. In deciding whether a particular governmental action has effected a taking, this Court focuses rather both on the character of the action and on the nature and extent of the interference with the rights in the parcel as a whole, here the city tax block designated as the 'land mark site.' " *Id.* at 130.

The appellant's assembled holdings purchased for power plant purposes are the logical basis for determining the

impact of regulations on its property rights. Under the teaching of *Penn Central* it is apparent that the portion of appellant's property within the open space area cannot be discreetly separated for purposes of a "taking" argument.

Appellant also urges that its investment-backed expectations for a power plant have been shattered. Apparently appellant relies on the planning provisions and zoning ordinances in effect at the time of purchase. There are numerous erroneous assumptions in this contention. Initially, this case is totally unlike *Kaiser Aetna v. United States* (1979) ..... U.S. ....., 100 S.Ct. 383, where the government acquiesced in the project and did not assert substantial public rights until the project had been completed. Instead the present case fits the description set forth in *Mugler v. Kansas* (1887) 123 U.S. 623:

> "It is true, that, when the defendants in these cases purchased or erected their breweries, the laws of the State did not forbid the manufacture of intoxicating liquors, but the State did not thereby give any assurance or come under any obligation that its legislation upon that subject would remain unchanged." *Id.* at 669.

Likewise, in *Hadacheck v. Sebastian* (1915) 239 U.S. 394, 410 this Court recognized that property owners have no vested rights because of conditions once obtaining. To recognize a distinct investment-backed expectation based upon regulatory requirements in effect when the land was purchased would amount to a governmental guarantee that public policy, as reflected through regulatory requirements, could never change as to that property. Such a rule would be an unacceptable limitation on one of the most essential and least limitable powers of government. *Hadacheck v. Sebastian, supra* at 410.

Three additional factors make this contention untenable. It appears that the company was able to place its holdings in its rate base as an electric power plant site held for

future use. As a result appellant was authorized to charge rates which included an amount calculated to produce a reasonable return on the subject property. See statement of the case of amici curiae Conservation Foundation, et al. Combined with the sale of 40 acres in 1979 appellant can hardly be heard to say that its property rights have been frustrated through a denial of any economic benefit from its investment. That is just not the case.

Secondly, appellant apparently abandoned its plans for a power plant on the site as a result of a company decision not based on any formal governmental action. RT at 73. Appellant's supposed investment-backed expectations then switched for purposes of trial to a desire for an industrial park, a use which was apparently not contemplated when the property was acquired. Of critical significance is the fact that under California law appellant could have pursued its quest for approval of a power plant without being subject to direct City jurisdiction. Pursuant to state legislation which had been enacted when the suit was filed the State Energy Resources Conservation and Development Commission was created. See generally Cal. Public Resources Code §§ 25000 et seq. Reflecting the principle that only one permitting agency should be involved with power plant siting and licensing, the statute gave the Energy Commission the exclusive power to certify all power plant sites and related facilities in lieu of any permit or other approval required by any other agency, including local governments. Cal. Public Resources Code § 25500. If the Energy Commission were to find that a facility would not conform with applicable local requirements, it could nevertheless approve a power plant if it found that such facilities are required for the public convenience and necessity and that there are not more prudent and feasible means of accomplishing those ends. Cal. Public Resources Code § 25525 [7]

[7]Cal. Public Resources Code § 25501.5 lists a series of sites which in effect would be exempt from Energy Commission jurisdiction.

Thus, had appellant chosen to do so it could have pursued its alleged investment-backed expectations by avoiding the City and bringing itself directly under the regulatory jurisdiction of the State Energy Commission. It seemingly comes with ill grace that appellant converted its alleged investment-backed expectations from a power plant to an industrial park for the purposes of convincing a trial court that its property rights had been frustrated, and now appellant argues to this Court that its investment-backed expectations with regard to a power plant have been frustrated.

Thirdly, the challenged open space plan contemplated the prospect of a nuclear power plant as desired by appellant. The plan states:

> "Again, such a facility, if sensitively designed and sited, could be compatible with open space preservation in this subsystem." (J.A. at p. 160).

Finally, the company (appellant's brief at p. 26) and some of its supporting amici (see e.g. amicus curiae brief of Washington Legal Foundation at p. 10) argue that the planning process by which the property was identified for possible acquisition combined with the bond issue which failed to pass resulted in a deprivation of all economic use and invoked a requirement for the payment of just compensation. This contention is utterly unfounded. In this case the City went through an open and public planning process resulting in reports recommending acquisition of the subject property together with other properties. The city council, after consideration of these reports, put the matter before the voters in the form of a bond proposition which then failed of passage. This planning process did not give

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Subdivision (c) (referring to appellant) does not appear to encompass the Los Penasquitos site. In any event, Cal. Public Resources Code §§ 25501.7 and 25502.3 allow the utility to waive any exclusion thereby bringing itself under the exclusive jurisdiction of the Energy Commission.

rise to a claim for pre-condemnation activities. In *Agins v. City of Tiburon, supra,* this Court concluded that more intrusive activities, including the actual filing of an action in eminent domain and the abandonment of that action, together with a rezoning which occurred at approximately the same time, constituted "good faith planning activity" and could not be considered a "taking". *Id.* at 2142-43 n.9.

In summary, taken individually none of the City's actions can constitute a "taking" and it is difficult to see how the whole can be greater than the sum of its parts. Therefore, even accepting the "course of conduct" approach, no "taking" has occurred.

III

WHERE REGULATORY ACTIONS WOULD CONSTITUTE "TAKINGS" IF ENFORCED, THE COURTS HAVE CONSISTENTLY INVALIDATED THE OFFENDING MEASURES

A. American Courts Have Utilized the Remedy of Invalidation for Land Use Regulations Which Would Otherwise be "Takings"

Contrary to appellant's approach, there can be no absolute dogma that a violation of protected property rights, no matter whether inadvertent or not, results in a constitutionally required remedy of forced compensation. Rather, the courts in dealing with these issues face a delicate problem of resolving potential conflicts between the inherent power of government to regulate (as expressed in the phrase "police power") and the constitutional guarantees accorded to private property through the Fifth and Fourteenth Amendments. It has long been recognized that the power to regulate is one of the most essential and least limitable powers of government. *Hadacheck v. Sebastian, supra,* at 410. On the other hand, property rights have received judicial recognition. *Kaiser Aetna v. United States, supra.* In resolving these potential conflicts it must be recognized that neither the power to regulate nor the protection accorded to property is absolute. In these circum-

stances the courts have determined that the appropriate balance between the two is generally to invalidate regulations which would otherwise be "takings." This approach strikes the proper balance between the needs of the public, as reflected in actions taken by its duly elected representatives, and the rights of private property owners. The remedy of forced purchase through inverse condemnation (or government by purchase—see *Andrus v. Allard, supra,* at 326) does not reflect a proper balance and would strike a crippling blow at legitimate government activities undertaken by regulation.

The legal theory supporting this conceptual framework is sound. A governmental act which would violate property rights is a legal nullity precisely because it is unaccompanied by the offer of just compensation that would be required to sustain it. *See e.g. Penn Central Transp. Co. v. New York City, supra,* at 136.

American courts have followed this approach. In *Fred F. French Investing Co., Inc. v. City of New York* (1976) 385 N.Y.S.2d 5 a property owner sought a declaration of unconstitutionality and damages in inverse condemnation allegedly arising from the rezoning of two private parks. Under the rezoning, the parks were to be made available to the public and the air space above (development rights) was to be usable elsewhere in the Manhattan area subject to approval by regulatory authorities and acceptance of the development rights by a qualified owner. The court held the zoning ordinances to be invalid, but also held that there had been no inverse condemnation and consequently no requirement that the city pay just compensation. In developing this conclusion the court stated:

> As noted above, when the State "takes", that is appropriates, private property for public use, just compensation must be paid. In contrast, when there is only regulation of the uses of private property, no compensation need be paid. Of course, and this is often the beginning of confusion, a purported "regu-

> lation" may impose so onerous a burden on the property regulated that it has, in effect, deprived the owner of the reasonable income productive or other private use of his property and thus has destroyed its economic value. In all but exceptional cases, nevertheless, such a regulation does not constitute a "taking", and is therefore not compensable, but amounts to a deprivation or frustration of property rights without due process of law and is therefore invalid. *Id.* at 8.

The point has been made even more dramatically by the First Circuit Court of Appeals. In *Pamel Corp. v. Puerto Rico Highway Authority* (1st Cir. 1980) 621 F.2d 33, the court unequivocally stated:

> "Our research has disclosed no case in which a federal court has ordered a state or local government unit to pay for diminution of the value of a piece of property caused by a zoning regulation." *Id.* at 35.

The court went on to observe the impropriety of the federal judiciary forcing a remedy of inverse condemnation on state or local authorities.

> "Federal enforcement of the inverse condemnation remedy would be a singularly inappropriate intrusion into the states' traditional domains of property law and land use policy. The federal constitutional right can be secured to the individual without forcing the state to purchase the property. Voiding the offending restriction will make the owner whole." *Id.* at 36.

See also *Jensen v. City of New York* (1977) 42 N.Y.2d 1079. Courts of other states have followed the same approach. *DeMello v. Town of Plainville* (Conn. 1976) 368 A.2d 71; *Gold Run, Ltd. v. Board of County Planning Com'rs* (Colo. 1976) 554 P.2d 317; *Davis v. Pima County* (Ariz. 1978) 590 P.2d 459, *cert. den.* (1979) 39 CCH 3178; *Eck v. City of Bismark* (N.D. 1979) 283 N.W.2d 193.[8]

[8]Innumerable cases follow this concept. Other examples include *Cardon Oil Co. v. Phoenix* (Ariz. 1979) 593 P.2d 656; *Trustees*

B. The Courts Have Ordered Damages Where Such Damages Have Been Contemplated Or Intended by the Legislature. Otherwise Invalidation Has Been Deemed the Appropriate Remedy

Appellant's money damages remedy by way of just compensation would, if accepted, transfer a significant portion of the power of the purse from local and state legislatures to the judiciary with concomitant damage to legislative independence and the budgetary process.[9] The courts have been sensitive to this concern and have awarded damages where they have been legislatively authorized.[10] Any other result would allow the judiciary to usurp the legislative function making commitments of limited funds

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Under Wills, etc. v. Town of Westlake (La. 1978) 357 So. 2d 1299; *Mailman Development Corp. v. City of Hollywood* (Fla. 1974) 286 So. 2d 614; *Gaebel v. Thornbury Township, Delaware County* (Pa. 1973) 303 A.2d 57; *State v. Johnson* (Me. 1970) 265 A.2d 711; *Scrutton v. County of Sacramento* (1969) 275 Cal. App. 2d 412.

[9]A vivid example of this is provided by *Virginia Surface Mining and Reclamation Association v. Andrus* (W.D. Va. 1980) 483 F. Supp. 425, appeal docketed No. 79-1538. There the District Court held that certain provisions of the federal Surface Mining Control and Reclamation Act so burdened the owners of potential coal producing land as to constitute a taking of property in violation of the Fifth Amendment. That federal act applies to a large percentage of the land in the Commonwealth of Virginia, not to mention other states. If the appellant's contentions here are accepted, and if the District Court's judgment in *Virginia Surface Mining* is correct, the conclusion must logically be reached that the United States has inadvertently purchased an enormous portion of the Commonwealth of Virginia. It is most unreasonable to assume that Congress contemplated or intended this result.

[10]Some of appellant's supporting amici charge the California courts with refusing to invoke a remedy of invalidation. See amicus curiae brief of the National Association of Manufacturers at p. 21. This is not the case. In *Furey v. City of Sacramento* (1979) 24 Cal. 3d 862, app. dism'd. . . U.S. . ., 62 L.Ed.2d 403, the landowners

where by legislative action such a commitment would have required a vote by elected officials or even an extraordinary vote of the electorate. *See e.g.* Cal. Constitution, Art. XVI, § 1.

For example, in *Regional Rail Reorganization Act Cases* (1974) 419 U.S. 102 the question was whether certain mandatory provisions of the Act there involved were "takings." It was stated:

> "There are clearly grave doubts whether the Rail Act would be constitutional if a Tucker Act remedy were not available as compensation for any unconstitutional erosion not compensated under the Act itself." *Id.* at 134.

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alleged that they were precluded from making use of certain sewage facilities which the landowners had been taxed to support through assessments. The case arose on demurrer and the court held, inter alia, that if the allegations were proven the landowners would be entitled to declaratory relief or mandate precluding application of certain disputed land use regulations to their property. *Id.* at 877-78. In *Billings v. Coastal Commission* (1980) 103 Cal.App.3d 729 the court overturned the denial of a permit by the Coastal Commission and in effect instructed the Commission to grant a permit subject to reasonable and appropriate conditions. *Id.* at 298. California courts do not show any reluctance to overturn excessive regulation or to protect property interests as they have struck down overly restrictive zoning ordinances. (*Hoshour v. County of Contra Costa* (1962) 203 Cal.App.2d 602); struck down onerous conditions placed upon permits issued by public agencies (*Bank of America v. State Water Resources Control Bd.* (1974) 42 Cal.App.3d 198); upheld the granting of conditional use permits and other land use permits (*Jacobson v. County of Los Angeles* (1977) 69 Cal.App.3d 374; *Natural Resources Defense Council, Inc. v. California Coastal Zone Conservation Com.* (1976) 57 Cal.App.3d 76); upheld the granting of variances (*Zakessian v. City of Sausalito* (1972) 28 Cal. App.3d 794; *Allen v. Humboldt County Bd. of Supervisors* (1966) 241 Cal.App.2d 158) and upheld the approval by local governments of subdivision maps (*Youngblood v. Board of Supervisors* (1978) 22 Cal.3d 644; *McMillan v. American Gen. Fin. Corp.* (1976) 60 Cal.App.3d 175).

The entire premise of the opinion was that if the Tucker Act would be available to provide a monetary remedy for any deficiency in payment to the railroads then the availability of that Act would remedy any constitutional infirmity which might otherwise exist because of no provision for compensation. This Court concluded that Congress had not intended to withdraw the Tucker Act grant of jurisdiction to the Court of Claims in suits arising under the Rail Act. It seems apparent that had this Court concluded that damages were not available, via congressional consent, the offending provisions of the Rail Act would have been stricken.[11]

Another example of this approach is in *U.S. Trust v. New Jersey* (1977) 431 U.S. 1. While the issues involved an impairment of contract, it is significant that the repeal by New Jersey of a provision which the Court held impaired the rights of certain bond holders was declared unconstitutional and void. *Id.* at 32. The opinion noted that:

> The state remains free to exercise their powers of eminent domain to abrogate such contractual rights, upon the payment of just compensation. *Id.* at 29, n. 27.

Thus, the Court invalidated the offending measure and left to the legislative body the choice of whether to extinguish those rights by payment of just compensation. See

[11]The amicus curiae brief of the Washington Legal Foundation states that the right of property owners to obtain compensation for unlawful zoning ordinances has been upheld in such cases as *Jacobson v. Tahoe Regional Planning Agency* (9th Cir. 1977) 566 F.2d 1353, modified sub nom. *Lake Country Estates, Inc. v. Tahoe Regional Planning Agency* (1979) 440 U.S. 391. This suggestion utterly misconstrues the holding of *Lake Country,* and overlooks the opinion of this Court in *Supreme Court of Virginia v. Consumer's Union of the United States* (1980) . . U.S. . ., 64 L.Ed.2d 641, 654 at n.11. There, the Court stated that it had not even necessarily sanctioned injunctive relief against the Tahoe Regional Planning Agency and flatly noted: "We simply affirmed the Court of Appeal's holding that TRPA officials could not be held liable in damages for their legislative acts."

also *United States v. Clarke* (1980) ..... U.S. ....., 100 S.Ct. 1127 (whether an action in inverse condemnation is the proper remedy for a "taking" of Indian land is a question of Congressional intent).

The courts have recognized the overwhelmingly chilling effect that the prospect of money damages would have on needed governmental regulation. For example, in *Charles v. Diamond* (1977) 392 N.Y.S.2d 594, the court observed that extending liability where there had been no de facto appropriation of private property would lead to limitless municipal liability. Specifically, the court stated:

> "More important, the prospect of tort liability might impede equally desirable governmental regulation and legislation since municipal officers might fear subsequent judicial imposition of massive tort recoveries. Open-ended liability could inhibit the enactment of needed, but constitutionally borderline, legislation." *Id.* at 602-05.

The North Dakota court has expressed similar fears. In *Eck v. City of Bismark, supra,* it was stated:

> We agree that the potential consequences of an action for inverse condemnation militate against its availability to challenge the constitutionality of governmental regulation. If actions for inverse condemnation loom in the future, land-use planning might be stymied, the fiscal-budgetary process chaotic, and the financial burdens on the community staggering. Most important, authorization of such an action would enable North Dakota courts to sit as legislative bodies doling out the State and local fisc. *Id.* at 200-01.[12]

[12]The claim that regulatory agencies must be deterred from excessive actions is based on the false premise that these agencies would otherwise act in an abusive manner. The record of the California Coastal Commission in regard to permit matters illustrates that the system works without the destructive presence of a remedy in inverse condemnation. For the period 1973 through May of 1980

This Court has recognized in other contexts the effect that significant financial costs imposed by higher authority can have on normal governmental programs and legislative choices. See *National League of Cities v. Usery* (1975) 426 U.S. 833, 846-47.

Likewise commentators have recognized the inhibiting effect of the compensation remedy:

> Clearly the threat to the governmental pocketbook will intimidate legislative bodies which are considering the imposition of land use regulatory measures. In those very areas where rapid population growth and sprawl have stretched governmental capacity to finance demanded public services, in these very areas the need for rigorous controls is apt to be greatest. Yet the threat of contingent and unplanned-for liability, through inverse condemnation, would especially in these places, deter legislators from enacting the kind of virile measures needed. Instead, financial caution would dictate milky-toast, completely safe and probably ineffective measures. Instead of walking to the brink of its constitutional powers, the legislative body would stay far inside the edge.

Beuscher, *Some Tentative Notes on the Integration of Police Power and Eminent Domain by the Courts: So-Called Inverse or Reverse Condemnation,* Urb. L. Ann. 1-2

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the Commission, including its six regional commissions, has held hearings on approximately 39,000 permit applications. Of these approximately 37,500 were granted and approximately 1650 were denied. Approximately 40 of these matters went to litigation (including denials or approvals with conditions to which applicants objected). In 31 of those cases the Commission prevailed and in nine it lost. On remand in the nine cases the Commission lost permits were granted in seven instances. In the remaining two instances the Commission again denied the applications. The Commission prevailed in subsequent litigation on one of those matters and the other was not challenged.

(1968). *See also* Hall, *Eldridge v. City of Palo Alto: Aberration or New Direction in Land Use Law?*, 28 Hastings L. J. 1569, 1597 (1977).[13]

It is not simply the threat of monetary damages which has a chilling effect. It is also the cost of litigating an action in which damages is a possible remedy, as opposed to an action in which invalidation is the result. Where a court has invalidated a regulation, the case is over. However, in an action for damages the parties must proceed to try the issue of the fair market value of the property with all the attendant complexities and technicalities of an eminent domain proceeding. In states such as California, the costs of the litigation, if the landowner is successful, are taxable

[13]There have been innumerable law review articles written on this subject. A central one this Court has cited (*Penn Central Transp. Co. v. New York City, supra*) is Michelman, Property, Utility and Fairness: Comments on the Ethical Foundations of "Just Compensation" Law, 80 Harv. L. Rev. 1165 (1967). Additionally, several writers have questioned the propriety of a monetary remedy (*see, e.g.*, Delafons, *Land Use Control in the United States* (2d ed. 1969) at 110-11; Mandelker, *Inverse Condemnation: The Constitutional Limits* (1966) Wis. L. Rev. 3, 48-49). A number of writers have suggested legislative provision for damages in certain cases of regulation (*see, e.g.*, Carmichael, *Transferable Development Rights as a Basis for Land Use Control*, 2 Fla. St. U. L. Rev. 35 (1974); Rose, *A Proposal for Separation and Marketability of Development Rights as a Technique to Preserve Open Space*, 2 Real Estate L.J. 635 (1974); Costonis, *The Chicago Plan, Incentive Zoning and the Preservation of Urban Landmarks*, 85 Harv. L. Rev. 574 (1972); Krasnowiecki and Paul, *The Preservation of Open Space in Metropolitan Areas*, 110 U. Pa. L. Rev. 179 (1961). Some commentators have advocated that the damage remedy is excessive (*see, e.g.*, Girard, *Agins: A Step in the Right Direction*, Land Use L. & Zoning Dig. (September 1979); Magavern, *The Evolution and Extension of the New York Law of Inverse Condemnation*, 24 Buff. L. Rev. 273 (1975); Clark and Kidman, *The Relationship of Just Compensation to the Land Use Regulatory Power*, 2 Pepperdine L. Rev. 79 (1975); Comment, 26 Stan. L. Rev. 1439 (1974); Beuscher, *Land Use Controls: Cases and Materials* (3d ed. 1964) at 538-50; Note, 66 Harv. L. Rev. 1134 (1953)).

to the regulatory body. Cal. Code of Civil Procedure § 1036. This amount includes the owner's "reasonable attorney, appraisal and engineering fees actually incurred . . . ." *Id.* The property owner is also entitled to interest from the date of taking. As a result, the cost to a public agency from a successful inverse condemnation action is far more than simply the market value. Even if a public agency is successful and prevails in the appellate courts, it will not recover its complete defense costs. *Briggs v. State of California* (1979) 98 Cal.App.3d 190, appeal dism'd (1980) 100 S.Ct. 3005, vividly demonstrates this point. There the California Court of Appeal reversed an inverse condemnation judgment against the state. The record in that case discloses that the state's defense expenditures were more than $235,000. The trial court concluded that the landowner's costs were more than $200,000 and her reasonable attorney's fees were $751,000. The presence of the potential for incurring all or part of such costs, even in a successful action, is an additional factor inhibiting to any regulatory agency.

In summary, the chilling effect of a remedy in just compensation would be particularly unfortunate in the present case involving a flood plain and wetland. The City would be faced with the impossible choice of purchasing the entire flood plain area, which of course the City's electorate rejected, or adopting regulations which would be so weak as to not deal effectively with the problem of avoiding flood damage and avoiding remedial public expense. Moreover, the inability, due to the fear of fiscal impact, to implement national policy by protecting wetland areas will result in the loss of such areas. Since the constitutional lines in "taking" cases are not clear the only prudent course for a fiscally responsible government would be to avoid any regulations which might result in a loss of even one case out of one hundred since that loss could wreak havoc on the local budget.

C. Recent Decisions of This Court Involving Constitutional Torts by Federal Officials or 42 U.S.C. § 1983 Do Not Imply a Remedy of Just Compensation and, in Fact, Land Use Regulation Is Perhaps the Classic Example of "Special Circumstances Counseling Hesitation" Where Money Damages Would be Inappropriate

In *Carlson v. Green* (1980) 100 S.Ct. 1468 it was alleged that a federal prisoner died from failure to receive proper medical attention. The alleged behavior by the federal defendants amounted to tortious conduct. In the course of allowing the estate of the prisoner to seek damages against federal defendants, this Court noted two exceptions where damages would be inappropriate. The first exception is when there are "special factors counseling hesitation in the absence of affirmative action by Congress." *Id.* at p. 1472.

Land. use regulation presents the classic example of special circumstances because of the strong potential for conflict between the power to regulate as an inherent power of government and constitutionally protected property rights. As previously noted, neither is absolute nor subsumes the other. The ability of elected officials to freely exercise their conscience in enacting legislation which they perceive as promoting the public welfare would be dealt a crippling blow by the requirement of forced purchase in the event of excessive regulation. Another aspect of the special circumstances involved with land use regulation is the potential for affecting federal-state relationships through federal judicial intrusion into the domain of state and local governments which traditionally deal with land use matters. See *Carlson v. Green, supra,* at 1474, n. 11; *Pamel Corp. v. Puerto Rico Highway Authority, supra,* at 36. It is one matter for the judiciary to evolve rules governing the conduct of federal officials and another to invoke those same rules ipso facto against state and local officials where principles of federalism "counsel hesitation."

The second factor noted in *Carlson* was the presence of an alternative remedy which has the sanction of Congress. *Carlson v. Green, supra* at 1492. This factor would seem to have a more direct bearing in relationships between the federal judiciary and the executive branch as structured by congressional action. In any event, however, it is more than apparent that the remedy of invalidation and/or injunction, always available in the land use context, is a fully effective alternative remedy eliminating the need to impose a requirement of just compensation. See *Pamel Corp. v. Puerto Rico Highway Authority, supra,* at 36. On the other hand, in *Carlson* where an estate brought action, there was obviously no remedy except monetary damages. See *Davis v. Passman* (1979) 442 U.S. 228, 245. Insofar as congressional sanction of an alternative remedy would be a necessary element of an action against state or local officials, it is apparent that invalidation has been the traditional remedy in the land use area and arguments to the contrary cannot be substantiated. See e.g. *Nectow v. Cambridge* (1928) 277 U.S. 183 (zoning classification declared invalid); *Pamel Corp. v. Puerto Rico Highway Authority, supra* at 35.

In *Owen v. City of Independence* (1980) ..... U.S. ....., 40 CCH S.Ct. Bull. B1738, the Court dealt with a city which had sullied the reputation of its police chief in an egregious manner during the course of discharging him. The opinion noted the impropriety of monetary damages where "countervailing considerations counsel otherwise" *Id.* at 1768. The present case does not come to this Court raising issues directly under 42 U.S.C. 1983 (the statutory basis of the action in *Owen*). But to the extent that the policy considerations expressed in that case are relevant to an analysis of whether there is a constitutionally implied remedy of just compensation, the land use regulatory process, for all the reasons just discussed, is perhaps the best

example of the presence of countervailing considerations indicating the impropriety of monetary damages.[14]

CONCLUSION

For the foregoing reasons amici curiae respectfully submit that the appeal in this case be dismissed or alternatively that the judgment of the California Court of Appeal be affirmed.

Dated: October 6, 1980

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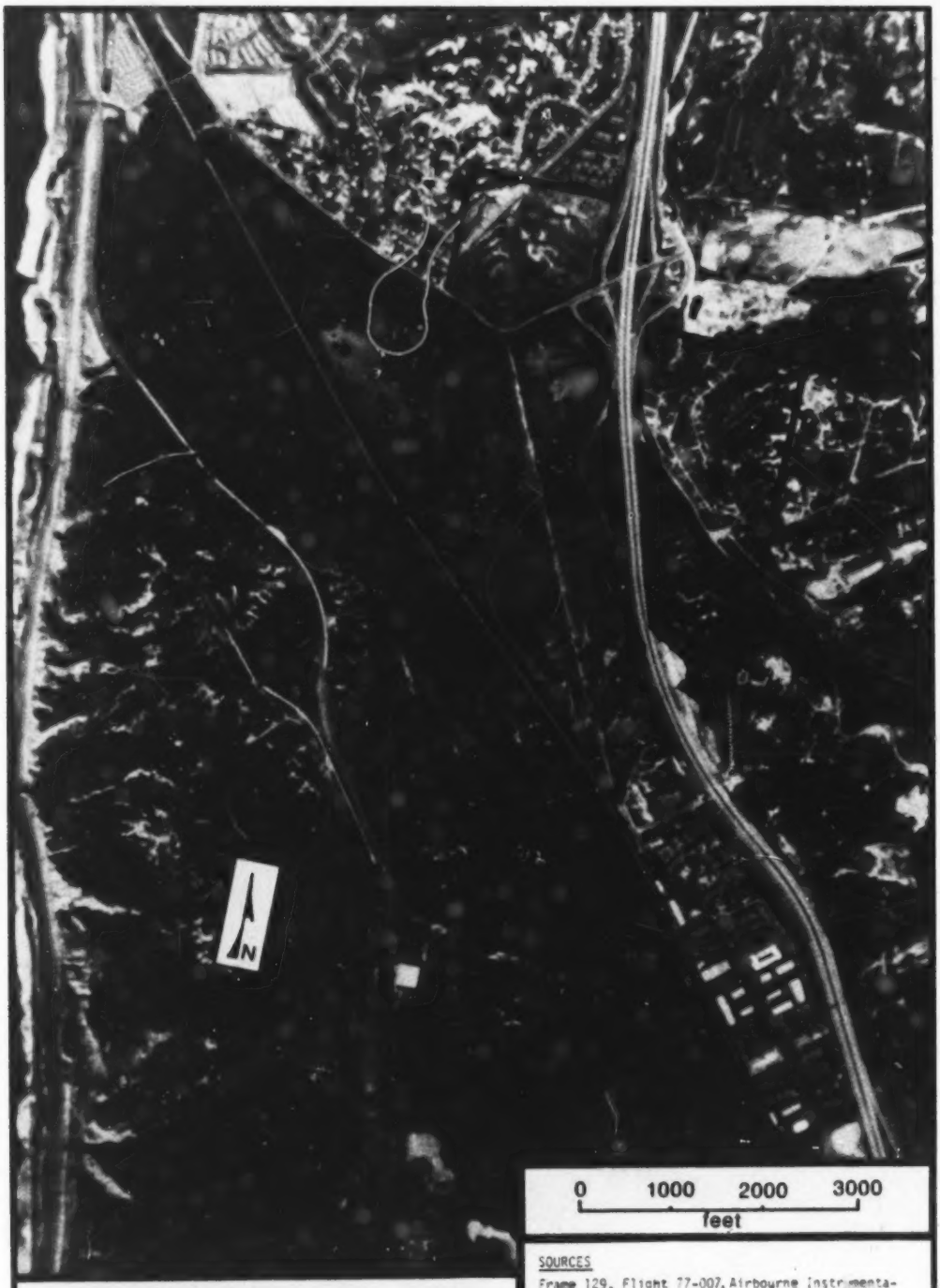
[14]Amicus curiae San Diego Urban League, Inc. argues against exclusionary zoning and deplores the increased costs of housing. Neither of these issues are remotely involved in the instant case. In any event there is no rational connection between awarding property owners just compensation and providing relief to third parties who are victims of exclusionary practices. The concern expressed over housing costs is properly directed to a lawmaking body. The mix of uses and densities assigned by a local government is a matter of legislative discretion so long as the actions taken do not infringe on fundamental rights or are not arbitrary or unreasonable. If challenged actions are unreasonable, the proper remedy, and the one most beneficial to the affected persons, would be invalidation or injunctive relief.



Portion of NASA Public Domain Aerial Photo (taken Jan. 1,1977) showing SDG&E Property

SOURCES

Frame 129, Flight 77-007, Airbourne Instrumentation Research Program, National Aeronautic and Space Administration, January 13, 1977

SDG&E property boundaries mapped by Technical Services Division, California Coastal Commission, September 1980

APPENDIX A

California Dept. of Navigation and Ocean Development Aerial Photo (taken April 16,1972) showing SDG&E Property and Area Designated as Open Space

Area Designated as Open Space

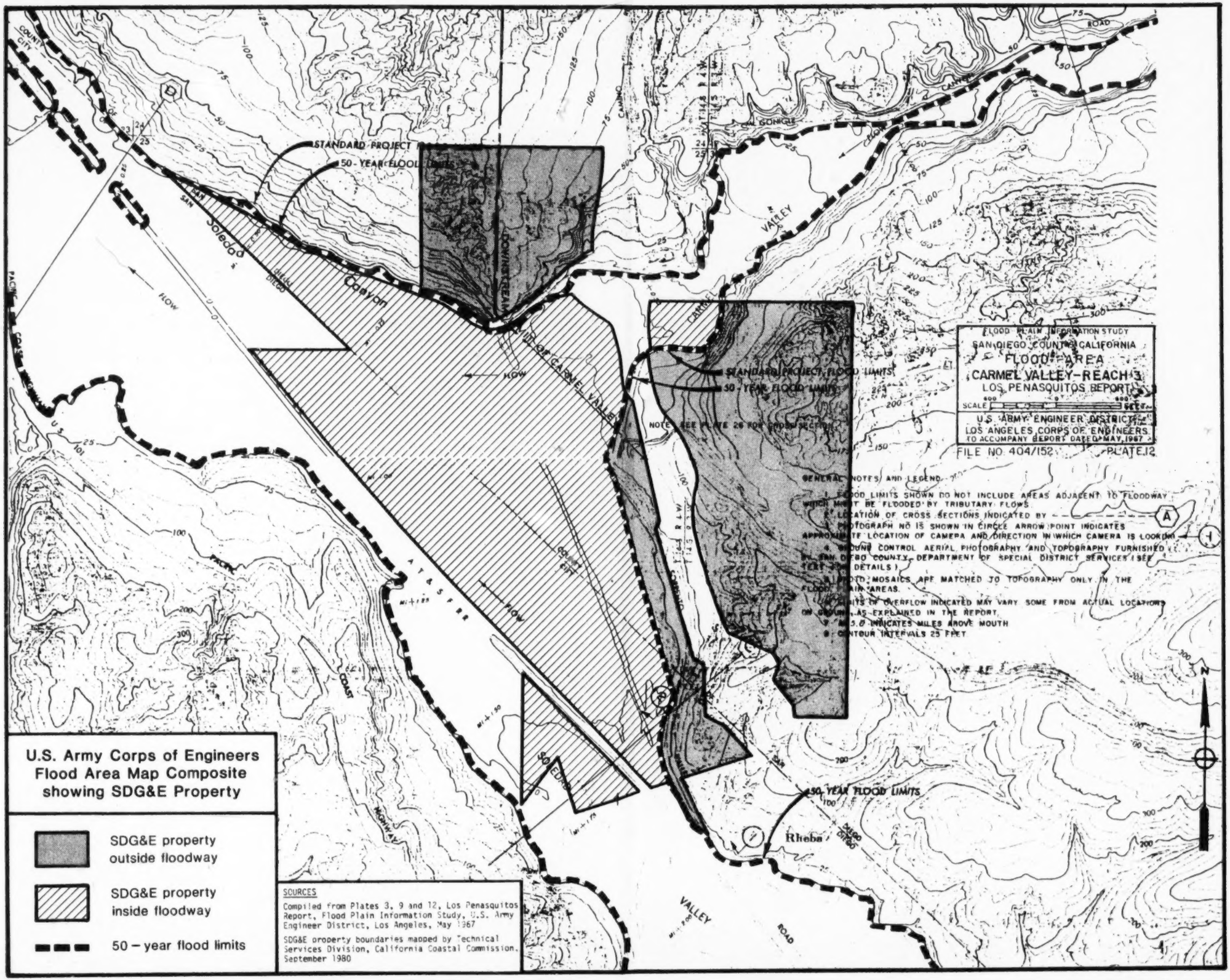
Other Land Owned by SDG&E

SOURCES

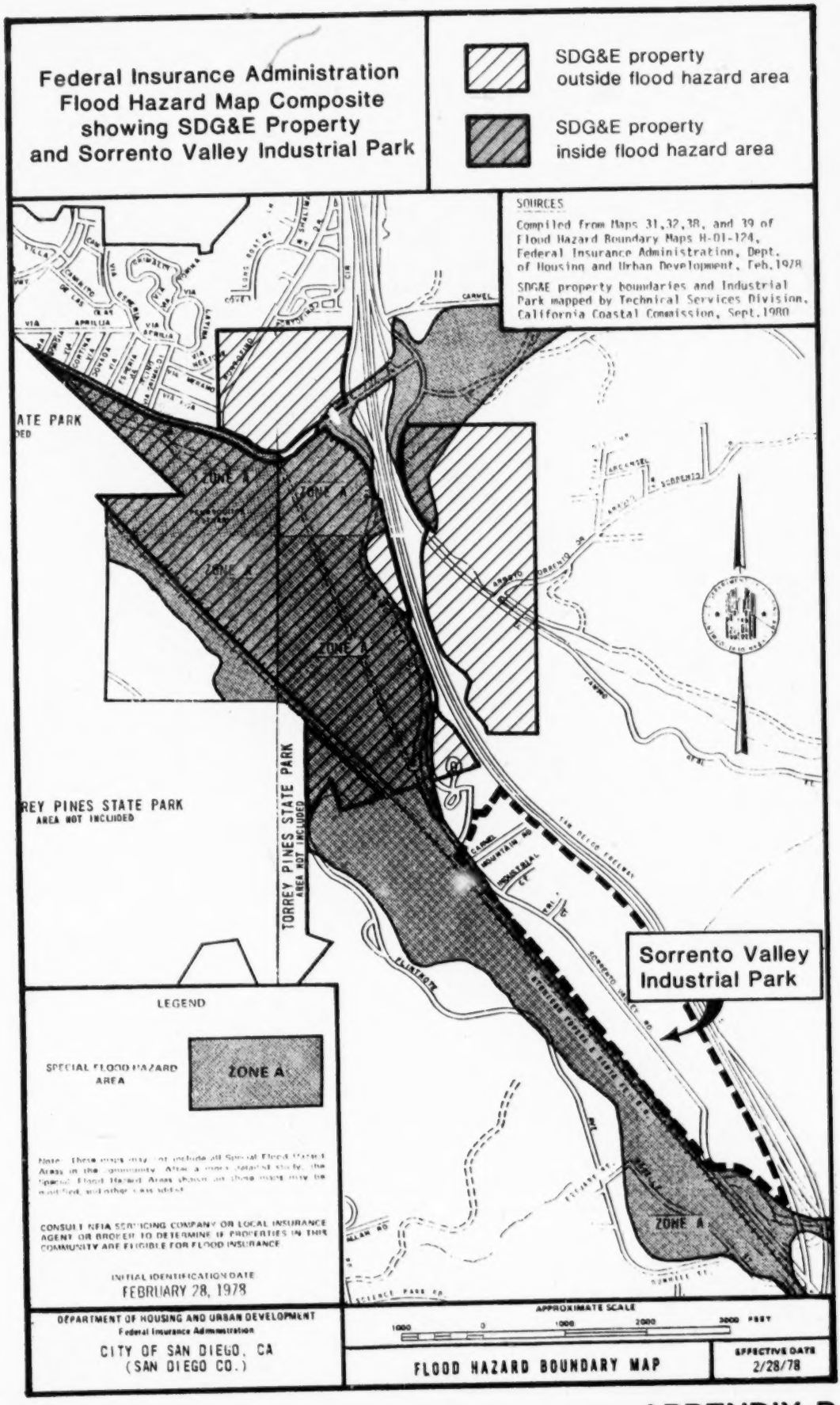
Frame 68, Carnahan et al, Coastal Oblique Aerial Flight, Comprehensive Ocean Area Plan, California Dept. of Navigation and Ocean Development, April 16, 1972.

SDG&E property boundaries and Open Space areas added by Technical Services Div., San Diego, California Coastal Commission, September 1980

APPENDIX B


U.S. Army Corps of Engineers
Flood Area Map Composite
showing SDG&E Property
SDG&E property
outside floodway
SDG&E property
inside floodway
50 – year flood limits
SOURCES
Compiled from Plates 3, 9 and 12, Los Penasquitos Report, Flood Plain Information Study, U.S. Army Engineer District, Los Angeles, May 1967
SDG&E property boundaries mapped by Technical Services Division, California Coastal Commission, September 1980
FLOOD PLAIN INFORMATION STUDY
SAN DIEGO COUNTY, CALIFORNIA
FLOOD AREA
CARMEL VALLEY-REACH 3
LOS PENASQUITOS REPORT
U.S. ARMY ENGINEER DISTRICT
LOS ANGELES CORPS OF ENGINEERS
TO ACCOMPANY REPORT DATED MAY, 1967
FILE NO. 404/152
PLATE 12
STANDARD PROJECT FLOOD LIMITS
50-YEAR FLOOD LIMITS
GENERAL NOTES AND LEGEND
1. FLOOD LIMITS SHOWN DO NOT INCLUDE AREAS ADJACENT TO FLOODWAY WHICH MUST BE FLOODED BY TRIBUTARY FLOWS
2. LOCATION OF CROSS SECTIONS INDICATED BY
3. PHOTOGRAPH NO IS SHOWN IN CIRCLE ARROW POINT INDICATES APPROXIMATE LOCATION OF CAMERA AND DIRECTION IN WHICH CAMERA IS LOOKING
4. GROUND CONTROL AERIAL PHOTOGRAPHY AND TOPOGRAPHY FURNISHED BY SAN DIEGO COUNTY DEPARTMENT OF SPECIAL DISTRICT SERVICES (SEE TEXT FOR DETAILS)
5. PHOTO MOSAICS ARE MATCHED TO TOPOGRAPHY ONLY IN THE FLOOD PLAIN AREAS.
6. LIMITS OF OVERFLOW INDICATED MAY VARY SOME FROM ACTUAL LOCATIONS ON GROUND, AS EXPLAINED IN THE REPORT.
7. M 5.0 INDICATES MILES ABOVE MOUTH
8. CONTOUR INTERVALS 25 FEET
Carmel Valley
Rhoda
Solana Beach
Del Mar
Pacific Coast Highway
Interstate 5
Camino Del Mar
Camino Del Sur
Carmel Valley Road
Flow
50 FEDS
50-YEAR FLOOD LIMITS

APPENDIX C


Federal Insurance Administration
Flood Hazard Map Composite
showing SDG&E Property
and Sorrento Valley Industrial Park
SDG&E property
outside flood hazard area
SDG&E property
inside flood hazard area
SOURCES
Compiled from Maps 31,32,38, and 39 of
Flood Hazard Boundary Maps H-01-124,
Federal Insurance Administration, Dept.
of Housing and Urban Development, Feb.1978
SDG&E property boundaries and Industrial
Park mapped by Technical Services Division,
California Coastal Commission, Sept.1980
ATE PARK
DED
REY PINES STATE PARK
AREA NOT INCLUDED
TORREY PINES STATE PARK
AREA NOT INCLUDED
ZONE A
Sorrento Valley
Industrial Park
LEGEND
SPECIAL FLOOD HAZARD
AREA
ZONE A
CONSULT NFIA SERVICING COMPANY OR LOCAL INSURANCE
AGENT OR BROKER TO DETERMINE IF PROPERTIES IN THIS
COMMUNITY ARE ELIGIBLE FOR FLOOD INSURANCE
INITIAL IDENTIFICATION DATE
FEBRUARY 28, 1978
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Federal Insurance Administration
CITY OF SAN DIEGO, CA
(SAN DIEGO CO.)
APPROXIMATE SCALE
1000 0 1000 2000 3000 FEET
FLOOD HAZARD BOUNDARY MAP
EFFECTIVE DATE
2/28/78

APPENDIX D